

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Action No. 3:20-CV-221-MOC-DCK

WENDY MCKINNEY,

Plaintiff,

v.

CLEVELAND COUNTY SCHOOLS /  
BOARD OF EDUCATION, CLEVELAND  
COUNTY NORTH CAROLINA, ET AL.

Defendants.

**DEFENDANT PATRICK'S  
MOTION TO DISMISS**

Defendant Patrick moves the Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss all claims against him in this action for failure to state a claim upon which relief can be granted.

In support of this Motion, Patrick respectfully shows the Court:

1. Plaintiff's claims against Patrick in his official capacity should be dismissed because, among other reasons, they are duplicative of the claims against Patrick's then-employer, the Cleveland County Board of Education.

2. Plaintiff's Second Cause of Action, for Intentional Infliction of Emotional Distress, should be dismissed because, among other reasons, the Amended Complaint fails to adequately plead (a) extreme and outrageous conduct; (b) intent; and (c) severe emotional distress.

3. Plaintiff's Third Cause of Action, for Negligent Infliction of Emotional Distress, should be dismissed because, among other reasons, (a) it is barred by public official immunity; (b) it is barred by North Carolina's Worker's Compensation Act; and (c) the Amended Complaint fails to adequately plead negligence and severe emotional distress.

4. Plaintiff's Fifth Cause of Action:

- a. For retaliation under N.C.G.S. § 115C-335.5, should be dismissed because, among other reasons, Plaintiff has not alleged she was retaliated against for having filed a written complaint of sexual harassment;
- b. For retaliation under N.C.G.S. § 168A-11(c) should be dismissed because, among other reasons, (a) Plaintiff has brought an Americans with Disabilities Act claim against Patrick; and (b) Plaintiff's claim was brought more than 180 days beyond the latest action by Patrick;
- c. For retaliation under N.C.G.S. § 126-85 should be dismissed because, among other reasons, N.C.G.S. § 126-85 neither Plaintiff nor Patrick were employed by a covered employer at any relevant time alleged in the Amended Complaint.

5. Plaintiff's Seventh Cause of Action, under the Americans with Disabilities Act, should be dismissed because, among other reasons, (a) Plaintiff does not claim Patrick denied her leave; (b) Patrick was not Plaintiff's employer; and (c) Plaintiff has not plead that her disability was the "but-for" cause of her termination.

6. Plaintiff's Eighth Cause of Action, under the Family Medical Leave Act, should be dismissed because, among other reasons, Plaintiff does not allege Patrick played any part in the decision to terminate Plaintiff.

7. Plaintiff's Ninth Cause of Action, under 42 U.S.C. § 1983, should be dismissed because, among other reasons, (a) Plaintiff alleges only conclusory allegations that Patrick somehow violated her rights; (b) Plaintiff has not alleged facts showing that Patrick's conduct

was unlawful; (c) Patrick is entitled to qualified immunity; and (d) Plaintiff has not alleged facts showing a causal connection between Patrick's conduct and Plaintiff's harm.

8. Plaintiff's Tenth Cause of Action, for punitive damages, should be dismissed because, among other reasons, Plaintiff has failed adequately to allege any claim arising under either federal or state law.

Pursuant to Local Civil Rule 7.1, a Brief in Support of this Motion is being submitted contemporaneously herewith.

WHEREFORE, for the reasons stated herein, as well as those reasons stated in Patrick's supporting brief filed contemporaneously herewith, Defendant Patrick respectfully prays the Court:

1. To dismiss all claims against Patrick in this action with prejudice, and
2. To grant Patrick such other and further relief as the Court shall deem just and proper.

This the 22nd day of May, 2020.

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will serve the following users:

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This the 22nd day of May, 2020.

/s/ Sarah M. Saint  
Sarah M. Saint